



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Gary L. Bennis

Attorney file: 5437cp

Serial No.: 09/766,032

Examiner: Rowan, Kurt C.

Filed: 01/19/2001

Group: 3643

For: TWO-STAGE FISHING BOBBER

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450 on 11-14-06 by applicant's attorney, Carl L. Johnson.

Carl L. Johnson

11-14-06

Date

REPLY BRIEF COVER LETTER

Honorable Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Enclosed are three copies of a reply brief that the Appellant is submitting for the above-identified patent application in response to the Examiner's Answer pursuant to Rule 37 C.F.R. 41.41. Please charge any deficiency in fees to deposit account 10-0210.

Respectfully submitted,

JACOBSON AND JOHNSON

By

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CLJ/tp
Enclosure



Attorney Docket: 5649

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Gary L. Bennis	Attorney file:	5437cp
Serial No.:	09/766,032	Examiner:	Rowan, Kurt C.
Filed:	01/19/2001	Group:	3643
For:	TWO-STAGE FISHING BOBBER		

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

REPLY BRIEF
TO THE EXAMINER'S ANSWER

Honorable Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

I. STATUS OF CLAIMS

Claims 18, 19, and 22 to a two-stage fishing bobber responsive to different fishing forces are currently pending in the above-identified application. Claims 1-17 and 20-21 have been canceled from the application and thus are not a part of the present appeal.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether the reference of Riead teaches a fishing bobber that includes a spring having a spring constant that is about equal to the spring constant of the bobber in water or the total force to compress the spring with respect to a bobber main body being approximately equal to the total force to submerge the bobber main body and a resiliently displaceable member to thereby allow the simultaneous submersion of the bobber main body and the displacement of the resiliently displaceable member with respect to the bobber main body so as to provide gradual resistance?
2. Whether the reference of Riead teaches a fishing bobber having a force to displace a resiliently displaceable member to a down position as being substantially equal to the buoyant force of a bobber main body so that the when the resiliently displaceable member is in the down position the bobber main body is submerged?
3. Whether the reference of Riead teaches a fishing bobber having a member resiliently displaceable with respect to a bobber main body in response to a force on the member with the force on the member sufficient to overcome at least some if not all of the buoyant force of the bobber main body to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance?

III. ARGUMENT

Appellant has received and review the Examiner's Answer dated November 9, 2006 in support of the Examiner rejections of Appellant's independent claims 18 and 22 and dependent claim 19 under 35 U.S.C. 102(b) as being anticipated by the reference of Riead (U.S. Patent No. 4,461,114). The Appellant respectfully disagree with the Examiner's Answer dated November 9, 2006 in support of the Examiner's rejection of Appellant's independent claims 18 and 22 and dependent claim 19 for the following reasons.

1. **The reference of Riead does not teach a fishing bobber that includes a spring having a spring constant that is about equal to the spring constant of the bobber in water or the total force to compress the spring with respect to a bobber main body being approximately equal to the total force to submerge the bobber main body and a resiliently displaceable member to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.**

Appellant's claims 18 and 19 stands rejected under 35 U.S.C. 102(b) as being anticipated by the reference of Riead (U.S. Patent No. 4,461,114). In regards to Appellant's claims 18 and 19, Appellant's claims 18 and 19 each calls for a two-stage fishing bobber responsive to different fishing forces, the fishing bobber including:

“... a spring having a spring constant that is about equal to the spring constant of the bobber in water or the total force to compress the spring with respect to the bobber main body is approximately equal to the total force to submerge the bobber main body and a resiliently displaceable member to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with

respect to the bobber main body so as to provide gradual resistance.” (Emphasis added.)

On page 3, lines 11-21 of the Examiner’s reply dated November 9, 2006, in further support of the Examiner’s rejection of Appellant’s claims 18 and 19, the Examiner stated:

“... Riead shows a fishing bobber having all of the structure shown in the claims with element 62 and connected parts such as wire hook 72, contact 40, and stem 56 being interconnected to be pulled down by the force of a fish biting. As these elements are being pulled down, the bobber is also being pulled down since the spring resists being compressed. Since the bobber only has a slight amount of buoyancy (column 4, lines 28-35), only a small pull is required is [to] pull it down. Since the spring is small, it would have a small spring constant and hence the total force to compress the spring is about equal to the total force to submerge the bobber main body to thereby allow simultaneous submersion of the bobber main body and displacement of the member with respect to the bobber main body so as to provide a gradual resistance.” (Emphasis added.)

On page 4, lines 1-11 of the Examiner’s reply dated November 9, 2006, the Examiner further stated:

“... Riead says that the light will lit by an additional leader load less than that required to submerge the float totally. For this to occur, the float is clearly in the process of simultaneously submerging as the lamp is turned on, and hence, the spring constant is about equal to the spring constant of the bobber in the water or the total force to compress the spring with respect to the bobber main body is about equal to the total force to submerge the bobber main body and resiliently displaceable member. It should be pointed out from the preceding section that Riead has the bobber start to sink as the pull on the leader increases. The light turns on as the bobber is starting to be pulled under the water. Clearly, Riead does not want the lamp to be switched on after the bobber is under the water surface, but the two events, the bobber being pulled under and the lamp being lit happen together.” (Emphasis added.)

The Appellant respectfully but strenuously disagrees with the Examiner’s above statement. More specifically, the Appellant respectfully submits that the reference of

Riead does not teach Riead's spring 64 as having a spring constant to compress Riead's spring 64 with respect to Riead's bobber main body 2 being "approximately equal to" the total force to submerge the bobber main body 2 and Riead's washer 62 "...to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance ..." as called for in Appellant's claims 18 and 19. Attention is respectfully directed to column 5, lines 1-25 wherein the reference of Riead specifically teaches Riead's spring 64 as having a tension that provides sufficiently sensitivity to Riead's lamp switch 40 so that:

"...the lamp will be lighted by an additional leader load less than that required to submerge the float completely." (Emphasis added.)

It is respectfully submitted that the teaching of a compression of Riead's spring 64 for the lighting of Riead's lamp is different from the spring of Appellant's claims 18 and 19, which provides for:

"the total force to compress the spring with respect to the bobber main body is approximately equal to the total force to submerge the bobber main body and a resiliently displaceable member." (Emphasis added.)

In regards to the Examiner's above statement that Riead's device "... allow simultaneous submersion of the bobber main body and displacement of the member with respect to the bobber main body so as to provide a gradual resistance..." the Appellant strenuously disagrees. Attention is respectfully direct to page 4, lines 16-19 of the Examiner's reply dated November 9, 2006 wherein the Examiner states:

“...As to the washer 62 of Riead being submerged before Riead’s body is submerged, this appears to be the case,...” (Emphasis added.)

In regards to Riead’s washer 62, the Examiner asserted on page 3, lines 1-4 of the Final Office Action dated November 16, 2005 that Riead’s washer 62 is equivalent to the displacement member of Appellant’s claims 18 and 19. It is respectfully submitted that since Riead’s washer 62 is submerged before Riead’s body is submerged, as acknowledged by the Examiner, Riead’s device thus does not provide for “...simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance” as called for in Appellant’s claims 18 and 19.

In further regards to the Examiner’s above comments in support of the Examiner’s rejection of Appellant’s claims 18 and 19, the Appellant respectfully notes that the Examiner is currently rejecting Appellant’s claims 18 and 19 under 35 U.S.C. 102(b) as being anticipated by the reference of Riead. In *Atlas Powder Co. v. IRECO Inc*, the Federal Circuit held that:

“To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” Emphasis added, see *Atlas Powder Co. v. IRECO Inc*, 51 USPQ2d 1943, 1945 (Fed. Cir. 1999), citing *In re Schreiber*, 44 USPQ 1429, 1477 (Fed. Cir. 1997)

In *ATD Corp. v. Lydall, Inc.*, the Federal Circuit further elaborated that:

“An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence

was recognized by persons of ordinary skill in the field of the invention.” Emphasis added, see *ATD Corp. v. Lydall, Inc.*, 48 USPQ 2d 1321, 1328 (Fed. Cir. 1998)

In view of *Atlas Powder Co. v. IRECO Inc.* and In *ATD Corp. v. Lydall, Inc.*, the Appellant respectfully submits that the reference of Riead does not disclose subject matter of Appellant’s claims 18 and 19 with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention.

It is for the above reasons that the Appellant respectfully submits that the reference of Riead does not teach a fishing bobber that includes a spring having a spring constant that is about equal to the spring constant of the bobber in water or the total force to compress the spring with respect to a bobber main body being approximately equal to the total force to submerge the bobber main body and a resiliently displaceable member to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance as called for in Appellant’s claims 18 and 19.

2. **The reference of Riead does not teach a fishing bobber having a force to displace a resiliently displaceable member to a down position as being substantially equal to the buoyant force of a bobber main body so that the when the resiliently displaceable member is in the down position the bobber main body is submerged.**

Appellant's dependent claim 19 currently stands rejected under 35 U.S.C. 102(b) as being anticipated by the reference of Riead (U.S. Patent No. 4,461,114). On page 3, lines 6-10 of the Examiner's Reply dated November 9, 2006, in further support of the Examiner's rejection, the Examiner stated:

“...Applicant argues that Riead does not show a fishing bobber having a force to displace a resiliently displaceable member to a down position as being **substantially** equal to the buoyant force of a bobber main body so that when the resiliently displaceable member is in the down position the bobber main body is submerged, but the claim recited “about” not --substantially--.” (Emphasis added)

The Appellant respectfully but strenuously disagrees with the Examiner's above statement in support of the Examiner's rejections as Appellant's dependent claim 19 does in fact recite the term “substantially.” More specifically, attention is respectfully directed to Appellant's dependent claim 19, which calls for the fishing bobber of claim 18:

“...wherein the force to displace said member to a down position is substantially equal to the buoyant force of the bobber main body so that the when the member is in the down position the bobber main body is submerged.” (Emphasis added.)

It is for the above reason that the Appellant respectfully submits that the Examiner's above statement is incorrect.

3. **The reference of Riead does not teach a fishing bobber having a member resiliently displaceable with respect to a bobber main body in response to a force on the member with the force on the member sufficient to overcome at least some if not all of the buoyant force of the bobber main body to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.**

Appellant's independent claim 22 stands rejected under 35 U.S.C. 102(b) as being anticipated by the reference of Riead (U.S. Patent No. 4,461,114). Appellant's independent claim 22 calls for a two-stage fishing bobber that is responsive to different fishing forces, the two-stage fishing bobber having:

“...a member resiliently displaceable with respect to said bobber main body in response to a force on said member with the force on said member sufficient to overcome at least some if not all of the buoyant force of the bobber main body to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.” (Emphasis added.)

On page 4, lines 16-19 of the Examiner's reply dated November 9, 2006, in support of the Examiner's rejection of Appellant's claim 22, the Examiner stated:

“...As to the washer 62 of Riead being submerged before Riead's body is submerged, this appears to be the case, but it is not clear what effect this has since the patent to Riead still function in the same manner as that of the present invention..”

The Appellant agrees with the Office's above statement that the washer 62 of Riead is submerged before Riead's body is submerged. It is submitted that the aforementioned is significant in that the Examiner asserted on page 3, lines 1-4 of the Final Office Action dated November 16, 2005 that Riead's washer 62 is equivalent to the displacement member. The Appellant respectfully submits that since Riead's washer 62 is located below the body 2 of Riead's fishing float, the aforementioned location of Riead's washer 62 would result in Riead's washer 62 being submerged before Riead's body 2 is submerged in a body of water. The aforementioned thus is contrary to "... the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance..." as called for in Appellant's claim 22.

On page 4, lines 19-21 of the Examiner's reply dated November 9, 2006, in support of the Examiner's rejection of Appellant's claim 22, the Examiner stated:

"...Applicant argues that Riead does not provide for gradual resistance, but this is incorrect this is a function of the force being exerted on the fishing line or leader by the fish."

The Appellant respectfully disagrees with the Examiner's above statement. Referring to page 14, lines 22-25 of the Appellant's disclosure, it is respectfully noted that the advantage of providing for a gradual resistance is that:

"... the fish does not notice the sharp resistance of the bobber as the bobber is submerged and is less likely to spit out the bait. That is instead of the fish facing an abrupt jerk on the line by submerging the bobber the fish receives a gradual pull on the line as the spring is compressed and then a further tug as the bobber is

submerged. However, since there is already a resistance on the line from compressing the spring the submersion of the bobber does not produce a sharp increase in the force which might cause the fish to spit out the hook.” (Emphasis added, see page 14, lines 22-25 of the Appellant’s disclosure.)

The Appellant respectfully submits that since the reference of Riead does not teach the simultaneous submersion of Riead’s body 2 and the displacement of the Riead’s washer 62 with respect to Riead’s body 2, that Riead’s device thus does not provide for gradual resistance. That is, since Riead’s washer 62 and to Riead’s body 2 are of different size and different buoyancies, the downward displacement of Riead’s body 2 after the submergence of Riead’s washer 62 will result in the presence of a sharp resistance that leads to an abrupt jerk on the line, which is what Appellant’s independent claim 22 is directed to solve or prevent.

It is for the above reason that the Appellant respectfully submits that the reference of Riead does not teach a fishing bobber having a member resiliently displaceable with respect to a bobber main body in response to a force on the member with the force on the member sufficient to overcome at least some if not all of the buoyant force of the bobber main body to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance as called for in Appellant’s independent claim 22.

In further regards to Appellant’s claim 19, Appellant’s dependent claim 19 depends on Appellant’s independent claim 18. Since Appellant’s independent claim 18 is allowable for the reasons given above, Appellant’s dependent claim 19 should also be allowable.

It is for the above reasons that the Appellant respectfully submits that Appellant's claims 18, 19 and 22 are allowable over the prior art reference of Riead.

In summary, it is respectfully submitted that the Examiner was incorrect in rejecting Appellant's independent claims 18 and 22 and dependent claim 19 under 35 U.S.C. 102(b) as being anticipated by the reference of Riead (U.S. Patent No. 4,461,114). Accordingly, it is respectfully requested that the decision of the Examiner be reversed and that Appellant's claims 18, 19 and 22 be allowed.

Respectfully submitted,

JACOBSON AND JOHNSON

By



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CLJ/tp
Enclosures

IV. CLAIMS APPENDIX

Claims involved in the appeal:

1-17. (Canceled)

18. (Previously Presented) A two-stage fishing bobber responsive to different fishing forces comprising:

a bobber main body, said bobber main body providing a buoyant force to normally maintain the bobber main body in a floating condition; and

a spring having a spring constant that is about equal to the spring constant of the bobber in water or the total force to compress the spring with respect to the bobber main body is approximately equal to the total force to submerge the bobber main body and a resiliently displaceable member to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.

19. (Previously Presented) The two stage fishing bobber of claim 18 wherein the force to displace said member to a down position is substantially equal to the buoyant force of the bobber main body so that the when the member is in the down position the bobber main body is submerged.

20. (Canceled)

21. (Canceled)

22. (Previously Presented) A two-stage fishing bobber responsive to different fishing forces comprising:

a bobber main body, said bobber main body providing a buoyant force to normally maintain the bobber main body in a floating condition; and

a member resiliently displaceable with respect to said bobber main body in response to a force on said member with the force on said member sufficient to overcome at least some if not all of the buoyant force of the bobber main body to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.